IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re:	Chapter 11
Oreck Corp., *et al.*,	Case No. 13-04006 (KML)
Debtors.	(Jointly Administered)

OBJECTION OF WRI-URS SOUTH HILL, LLC TO DEBTORS' MOTION TO APPROVE (I) THE SALE TRANSACTION TO ORECK ACQUISITION HOLDINGS, LLC AND (II) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

WRI-URS South Hill, LLC (the "Landlord"), by and through its counsel, Kelley Drye & Warren LLP, objects to the *Motion By Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, To (I) Approve (A) The Sale Transaction Pursuant To The Asset Purchase Agreement With Oreck Acquisition Holdings, LLC, Free And Clear Of Claims, Liens, Encumbrances, And Other Interests; (B) The Assumption And Assignment of Certain Executory Contracts And Unexpired Leases; And (II) (A) Establish Sale and Bidding Procedures; And (B) Schedule A Sale Approval Hearing*[1] (the "Motion") filed by the above-captioned debtors (the "Debtors"). In support of this objection, the Landlord respectfully states as follows:

BACKGROUND

1. On May 6, 2013, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with this Court.

2. To date, the Debtors have continued to manage their businesses as debtors and debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

[1] Docket Entry No. 93.

3. The Debtors lease retail space from the Landlord pursuant to a written lease (the "Lease") at the South Hill Center in Puyallup, Washington (the "Leased Premises"). The Leased Premises are located in a shopping center as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

4. On May 16, 2013, the Debtors filed the Motion, which sought, among other things, to sell substantially all of the Debtors' assets and assume and assign the Lease to Oreck Acquisition Holdings, LLC (the "Stalking Horse Bidder") or the bidder with the highest and best bid at an auction. On June 20, 2013, the Court entered a supplemental order[2] approving the sale procedures and establishing the proposed cure amount for the Lease as $0.00 (the "Debtor-Proposed Cure Amount").

CURE OBJECTION

5. The Landlord disputes the Debtor-Proposed Cure Amount. The correct amount outstanding under the Lease is as follows (the "Landlord-Proposed Cure Amount"):

Store No.	Mall Name	Location	Landlord	Landlord-Proposed Cure Amount
166	South Hill Center	Puyallup, WA	WRI-URS South Hill, LLC	$9,393.85

The Landlord-Proposed Cure Amount includes an estimate of attorney's fees incurred to date.

6. Prior to assumption and assignment, the Debtors are required to cure all outstanding defaults under the Lease pursuant to section 365(b)(1) of the Bankruptcy Code. Pursuant to the Lease, the Debtors are obligated to pay regular installments of fixed monthly rent, as well as a pro rata share of common area maintenance costs, real estate taxes, and insurance. Moreover, prior to assumption and assignment, the Debtors must also compensate the Landlord for any actual pecuniary losses under the Lease. *See* 11 U.S.C. §365(b)(1)(B). As part

[2] Docket Entry No. 361.

of its pecuniary losses, the Landlord is entitled to attorneys' fees in connection with the Debtors' defaults under the Lease. *See LJC Corp. v. Boyle*, 768 F.2d 1489, 1494-96 (D.C. Cir. 1985); *In re Bullock*, 17 B.R. 438, 439 (B.A.P. 9th Cir. 1982); *In re BAB Enterprises, Inc.*, 100 B.R. 982, 984 (Bankr. W.D. Tenn. 1989); *In re Westview 74th St. Drug Corp.*, 59 B.R. 747, 757 (Bankr. S.D.N.Y. 1986); *In re Ribs of Greenwich Vill., Inc.*, 57 B.R. 319, 322 (Bankr. S.D.N.Y. 1986).

7. To the extent that rent, attorney's fees, interest, or other charges continue to accrue, and/or the Landlord suffers other pecuniary losses with respect to the Lease, the Landlord hereby reserves its rights to amend the Landlord-Proposed Cure Amount to reflect such additional amounts or to account for year-end adjustments, including, without limitation, adjustments for 2011, 2012, and 2013 (the "Adjustment Amounts"), which have not yet been billed or have not yet become due under the terms of the Lease. As such, the Debtors or their assignee(s) must be responsible to satisfy the Adjustment Amounts, if any, when due in accordance with the terms of the Lease, regardless of when such Adjustment Amounts are or were incurred.

8. The Landlord requests that the Debtors or their assignee(s) continue to comply with all contractual obligations, including the obligation to indemnify and hold the Landlord harmless. This indemnification obligation should include any events which occurred before the assumption and assignment but were not known to either the Landlord or the Debtors as of the date of the assumption and assignment. The indemnification obligation includes, but is not limited to, any (i) claims for personal injury that occurred at the Leased Premises, (ii) damage or destruction to the Leased Premises or property caused by the Debtors or their agents, and (iii) environmental damage or clean-up.

ADEQUATE ASSURANCE OBJECTION

9. In connection with the assumption and assignment of leases, shopping center landlords are afforded special statutory protections under the Bankruptcy Code in the form of adequate assurance of future performance. *In re Joshua Slocum*, 922 F.2d 1086; *In re Trak Auto Corp.*, 277 B.R. 655 (Bankr. E.D. Va. 2002). Section 365(b)(1) of the Bankruptcy Code provides:

> If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee–
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default…;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

10. In connection with a shopping center lease, adequate assurance of future performance includes adequate assurance

> (A) of the source of rent… due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee… shall be similar to the financial condition and operating performance of the debtor…;
>
> (B) that any percentage rent due under such lease will not decline substantially;
>
> (C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as radius, location, use, or exclusivity, … and

> (D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

11 U.S.C. § 365(b)(3).

11. The Debtors bear the burden of proving adequate assurance of future performance in connection with the assumption and assignment of the Lease. *In re F.W. Restaurant Assoc., Inc.*, 190 B.R. 143 (Bankr. D. Conn. 1995); *In re Rachels Indus. Inc.*, 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990); *In re Lafayette Radio Electronics Corp.*, 12 B.R. 302, 312 (Bankr. E.D.N.Y. 1981).

12. The Landlord has received some information from the Stalking Horse Bidder that it is still reviewing to determine whether or not it is adequate. The Landlord has not yet received any information evidencing any other bidder's adequate assurance of future performance. Therefore, the Landlord is unable at this point to assess whether or not its rights are being satisfied and reserves its rights to object to any adequate assurance information provided by either the Debtors, the Stalking Horse Bidder, or any other bidder.

13. In addition, whether or not the Debtors or their assignee(s) will satisfy the Adjustment Amounts is a question of adequate assurance. If the Debtors cannot provide adequate assurance that they or their assignee(s) will satisfy the Adjustments Amounts when they come due, then the Debtors have not provided the adequate assurance of future performance to which the Landlord is entitled under section 365(b)(1) of the Bankruptcy Code.

DEMAND FOR SECURITY

14. Section 365(l) of the Bankruptcy provides, in the pertinent part:

> If an unexpired lease under which the debtor is lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

11 U.S.C. § 365(l).

15. In the ordinary course of its business, the Landlord requires security deposits or guaranties when leasing (or assessing an assignment of a lease) to certain companies based on their financial information and history. In connection with the proposed assumption and assignment of the Lease, the Landlord hereby makes a demand for such security in one of those forms as required by section 365(l) of the Bankruptcy Code.

RESERVATION OF RIGHTS

16. The Landlord reserves its rights to amend and/or supplement this objection, including, without limitation, adding any obligations that accrue, arise, or are related to the pre-assumption and assignment period that subsequently become known to the Landlord.

17. The Landlord also reserves its rights to object to the assumption and assignment of the Lease on any basis, including, without limitation, that the Debtors have failed to provide adequate assurance of future performance by the Debtors or their proposed assignee(s).

WHEREFORE, the Landlord requests that the Court enter an order (i) requiring the Debtors or their assignee(s) to pay the Landlord-Proposed Cure Amount; (ii) reserving the Landlord's right to assert additional cure amounts, including attorney's fees, due under the Lease at the time of assumption and assignment; (iii) requiring the Debtors or their assignee(s) to continue to comply with the obligations under the Lease to pay the Adjustment Amounts and any indemnification obligations in the regular course of business; and (iv) granting such other and further relief as the Court deems just and proper.

Dated: July 2, 2013

Respectfully submitted,

Frost Brown Todd LLC

/s/ Robin Bicket White

Robin Bicket White, Esq. (TN Bar No. 019740)
Robert A. Guy, Jr., Esq. (TN Bar No. 016715)
Jason M. Bergeron, Esq. (TN Bar No. 23507)
150 3rd Avenue South, Suite 1900
Nashville, Tennessee 37201
(615) 251-5550
(615) 251-5551 Fax
rwhite@fbtlaw.com
bguy@fbtlaw.com
jbergeron@fbtlaw.com

-and-

KELLEY DRYE & WARREN LLP

Robert L. LeHane
Jennifer D. Raviele
101 Park Avenue
New York, New York 10178
Tel: (212) 808-7800
Fax: (212) 808-7897

Counsel for WRI-URS South Hill, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via ECF Noticing to all parties receiving ECF Notice in these chapter 11 cases and to the parties listed below via first class, U.S. mail, postage prepaid on this 2nd day of July, 2013:

Oreck Corporation
565 Marriott Drive, Suite 300
Nashville, Tennessee 37214

William L. Norton, III, Esq.
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203

Christopher F. Graham, Esq.
McKenna Long & Aldridge LLP
230 Park Avenue, Suite 1700
New York, NY 10169

David Gordon, Esq.
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308

Daniel J. McGuire, Esq.
Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601

S. Jason Teele, Esq.
Sharon L. Levine, Esq.
Lowenstein Sandler LLP
65 Livingston Avenue
Roseland, New Jersey 07068

Richard A. Steiglitz, Esq.
Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005

Lloyd Mueller
Office of the U.S. Trustee
701 Broadway, Suite 318
Nashville, Tennessee 37203

/s/ Robin Bicket White
Robin Bicket White